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7 Attorneys for Defendant  
8 RASH CURTIS & ASSOCIATES

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 SANDRA McMILLION, JESSICA ADEKOYA,  
12 AND IGNACIO PEREZ, on Behalf of  
13 Themselves and all Others Similarly Situated,

14 Plaintiffs,

15 v.

16 RASH CURTIS & ASSOCIATES,

17 Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DECLARATION OF MARK E. ELLIS IN  
SUPPORT OF DEFENDANT RASH CURTIS  
& ASSOCIATES' RESPONSE TO  
PLAINTIFFS' MOTION TO EXTEND  
CLASS CERTIFICATION BRIEFING  
SCHEDULE (DOCKET No. 30)**

Mark E. Ellis

18 I, Mark E. Ellis, declare:

19 1. I am an attorney at law duly licensed to practice before this Court, and I am Partner in  
20 the law firm of Ellis Law Group LLP, attorneys of record for Defendant Rash Curtis & Associates in  
21 the above matter. This declaration is based upon my own personal knowledge except as to those  
22 matters stated upon information and belief, and as to those things I believe them to be true. If called as  
23 a witness to testify to the matters asserted herein I would do so competently.

24 2. Defendant Rash Curtis & Associates has no objection per se to extending the class  
25 certification deadline. However, what Plaintiffs' attorneys have failed to apprise the Court is that the  
26 case was settled on January 13, 2017, for \$60,000 with payments made over six months at \$10,000 per  
27 month. See true and correct copies of the emails attached hereto as Exhibits A1 to A4.

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1           3.       On January 31, 2017, Plaintiffs' attorneys reneged on the settlement, and instead  
2 demanded \$375,000 based upon purportedly new information they had learned from Steve Kiser, the  
3 former Director of Compliance at Rash Curtis & Associates.

4           4.       As such, the refusal to abide by the settlement entered on January 13, 2017, has nothing  
5 to do with its terms, but everything to do with Kiser revealing confidential and trade secret protected  
6 information to Plaintiffs' attorneys. Plaintiffs' attorneys threatened on January 31, 2017, that: "We  
7 both knew that Mr. Kiser's information could bankrupt the company. I urge you to take our office  
8 seriously."

9           5.       While Rash Curtis & Associates is amenable to extending the class certification  
10 deadline, and Plaintiffs' counsel's statements in the motion accurately reflect this, Rash Curtis &  
11 Associates nonetheless wanted the proposed stipulation to reflect its intention to move to enforce the  
12 settlement, and there would be no implied waiver by agreeing to move the deadline.

13           6.       Rash Curtis & Associates anticipates its motion to enforce the settlement will be on file  
14 by no later than Thursday, March 9, 2017

15           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
16 true and correct and that this Declaration was executed on this 6th day of March, 2017, in Sacramento,  
17 California.

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20 MARK E. ELLIS  
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**EXHIBITS A1 – A4**

**Amanda Griffith**

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**From:** Yeremey Krivoshey <ykrivoshey@bursor.com>  
**Sent:** Tuesday, January 24, 2017 9:31 AM  
**To:** Andrew Steinheimer  
**Cc:** Jennifer Mueller; Amanda Griffith  
**Subject:** Re: McMillion v. RCA - confidential settlement communication

Andrew, you have an update on the settlement? We need to get this done asap considering that the payments are already getting phased in monthly installments.

On Fri, Jan 13, 2017 at 5:46 PM, Yeremey Krivoshey <ykrivoshey@bursor.com> wrote:  
Thanks.

On Fri, Jan 13, 2017 at 9:07 AM, Andrew Steinheimer <asteinheimer@ellislawgrp.com> wrote:

[REDACTED]  
Ok, we have a deal on the 60k with payments I'll prepare an agreement. ]

**From:** Yeremey Krivoshey [mailto:ykrivoshey@bursor.com]  
**Sent:** Friday, January 06, 2017 2:50 PM

**To:** Andrew Steinheimer  
**Cc:** Jennifer Mueller; Amanda Griffith  
**Subject:** Re: McMillion v. RCA - confidential settlement communication

Andrew,

Any update on this?

On Tue, Jan 3, 2017 at 12:45 PM, Yeremey Krivoshey <ykrivoshey@bursor.com> wrote:

[REDACTED] Andrew, the deal remains \$60k with monthly payments. Please confer with your client and let me know if we have a deal. Thanks. ]

On Tue, Jan 3, 2017 at 10:30 AM, Andrew Steinheimer <asteinheimer@ellislawgrp.com> wrote:

Yeremey,

Rash Curtis is willing to settle this matter for \$55,000. They can pay the \$55,000 in payments ending June 15. In return for release of all claims, dismissal of named plaintiff's claims with prejudice and dismissal of putative class claims

Begin forwarded message:

**From:** Yeremey Krivoshey <ykrivoshey@bursor.com>  
**Date:** January 31, 2017 at 5:36:08 PM PST  
**To:** Amanda Griffith <agriffith@ellislawgrp.com>  
**Cc:** Jennifer Mueller <jmueller@ellislawgrp.com>  
**Subject:** Re: McMillion v. RCA - confidential settlement communication

FRE 408 Confidential Settlement Communication

Amanda,

We've been in touch with Steven Kizer, Rash Curtis' former Compliance Director, who I am sure you know well. He is a treasure trove of information, and obviously knows the ins and outs of Rash Curtis' practice better than any of us, you included. I have zero doubt that a class can be certified with his help.

The settlement draft that was circulated earlier by your firm is unacceptable. Our new settlement offer is \$375,000, or, in the alternative, we need to sit down and get a class deal done with a mediator.

We have a class certification deadline quickly approaching, so we need to get a move on this quickly. We'll likely seek an extension to allow us to take discovery in light of all the newly discovered information and to get information that is now apparent has been improperly withheld.

## Mark Ellis

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**From:** Mark Ellis <mellis@ellislawgrp.com>  
**Sent:** Tuesday, January 31, 2017 6:19 PM  
**To:** ykrivoshey@bursor.com  
**Cc:** Mark Ellis; Amanda Griffith; Paula Crary; Rosanne Estrella; Crystal Strong; Roxy Chipak; Cheri Bowden  
**Subject:** Mcmillion settlement

Counsel, my name is Mark and I am the managing partner of Ellis Law Group. It is clear that you and Andrew entered into an enforceable settlement confirmed in writing on January 13, 2017. Andrew has left the firm and I have taken over the finalization of the settlement. The fact that you are talking to a disgruntled former employee that is attempting to extort its former employer is not impressive to me. Your suggestion that my client should pay you \$375,000 given this done deal is outrageous and is hereby rejected. I need your signed agreement back ASAP and we will get you the first payment as promised when it is executed. Mark

Sent from my iPhone

## Mark Ellis

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**From:** Mark Ellis  
**Sent:** Tuesday, January 31, 2017 6:34 PM  
**To:** Yeremey Krivoshey  
**Cc:** Amanda Griffith; Paula Crary; Rosanne Estrella; Crystal Strong; Roxy Chipak; Cheri Bowden  
**Subject:** Re: Mcmillion settlement

So sorry but I disagree. I will be happy to work with you but agreed settlements are not set aside this lightly and there was no basis any of the terms are not acceptable. Mark.

Sent from my iPhone

On Jan 31, 2017, at 6:29 PM, Yeremey Krivoshey <[ykrivoshey@bursor.com](mailto:ykrivoshey@bursor.com)> wrote:

Mark,

We never agreed on the material terms, and, further, Plaintiffs never even had a chance to provide revisions to the draft agreement Andrew circulated. Obviously, no agreement has been signed and no agreement is enforceable.

We both know that Mr. Kizer's information could bankrupt the company. I urge you to take our offer seriously.

Otherwise, I look forward to working on this case with you as this case proceeds.

On Tue, Jan 31, 2017 at 6:19 PM, Mark Ellis <[mellis@ellislawgrp.com](mailto:mellis@ellislawgrp.com)> wrote:

Counsel, my name is Mark and I am the managing partner of Ellis Law Group. It is clear that you and Andrew entered into an enforceable settlement confirmed in writing on January 13, 2017. Andrew has left the firm and I have taken over the finalization of the settlement. The fact that you are talking to a disgruntled former employee that is attempting to extort its former employer is not impressive to me. Your suggestion that my client should pay you \$375,000 given this done deal is outrageous and is hereby rejected. I need your signed agreement back ASAP and we will get you the first payment as promised when it is executed. Mark

Sent from my iPhone

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Yeremey Krivoshey  
Bursor & Fisher, P.A.  
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Walnut Creek, CA 94596  
Tel: (925) 300-4455  
Fax: (925) 407-2700  
E-Mail: [ykrivoshey@bursor.com](mailto:ykrivoshey@bursor.com)